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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,223	06/20/2003	Sudhindra P. Herle	2003.07.011.WT0	9788

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Dallas, TX 75380

EXAMINER

RAMPURIA, SATISH

ART UNIT	PAPER NUMBER
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2191

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/600,223

Applicant(s)

HERLE, SUDHINDRA P.

Examiner

Satish S. Rampuria

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

1. This action is in response to the amendment filed on 02/23/2007.
2. The objection to specification due to misspell is withdrawn in view of Applicant's amendment.
3. Claims 1-24 are pending.

***Response to Arguments***

4. Applicant's arguments filed 02/23/2007 have been fully considered but they are not persuasive.

In the remarks, the applicant has argued that:

As can be seen, there is no explicit teaching of a CPU or other processor at all, although it is of course reasonable to assume that a processor must be present to perform the tasks described. O'Neill does not teach or suggest a first CPU capable of controlling wireless communications with a wireless network, having a first memory associated with it. O'Neill does not teach or suggest a second CPU capable of executing an end-user application on the wireless communication device, and a second memory associated with it. O'Neill certainly does not teach or suggest that the first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade file in the second memory.

O'Neill therefore does not teach or suggest the limitations of independent claim 1, or similar limitations of independent claim 13. All rejections are therefore traversed.

Further, as O'Neill does not teach or suggest multiple processors, it does not teach or suggest an interprocessor communication unit as in claims 4 and 7.

O'Neill further does not teach or suggest the specific code replacement as claimed, e.g., in claims 2 and 9.

Accordingly, the Applicant respectfully requests the Examiner to withdraw the § 102 rejection with respect to all claims.

Examiner's response:

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by US Publication No. 2004/0068721 to O'Neill et al. (hereinafter, O'Neill).

**Per claim 1:**

O'Neill discloses:

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- A wireless communication device capable of accessing a wireless network and downloading a software upgrade file therefrom (paragraph [0011] "provide software updates to one or more wireless communication devices"), said wireless communication device comprising:
  - a first central processing unit (CPU) capable of controlling wireless communications with said wireless network (paragraph [0014] "...distribution environment provides a suitable distribution node... communication device");
  - a first memory associated with said first CPU (paragraph [0032] "...non-volatile memory... and a volatile memory" Also See Fig. 2 and related discussion);
  - a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device (paragraph [0011] "...software updates are generated by executing the software processing package...resident...device to be updated"); and
  - a second memory associated with said second CPU (paragraph [0032] "...non-volatile memory... and a volatile memory" Also See Fig. 2 and related discussion), wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...").

**Per claim 2:**

The rejection of claim 1 is incorporated and further, O'Neill discloses:

- wherein said first CPU is capable of executing a first upgrade agent program that replaces first existing code associated with a first existing software file in said first memory with first replacement code from said downloaded software upgrade file (paragraph [0032] "download agent...download...software from distribution...upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...").

**Per claim 3:**

The rejection of claim 2 is incorporated and further, O'Neill discloses:

- wherein said first upgrade agent program is stored in said first memory ((paragraph [0032] "download agent...download...software from distribution...upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 221 and related discussion).

**Per claim 4:**

The rejection of claim 3 is incorporated and further, O'Neill discloses:

- wherein said downloaded software upgrade file is transferred from said second memory to said first memory by an interprocessor communication unit (paragraph [0032] "download agent...download...software from distribution...

upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 223).

**Per claim 5:**

The rejection of claim 4 is incorporated and further, O'Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said downloaded software upgrade file is transferred into said first memory from said second memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update...").

**Per claim 6:**

The rejection of claim 3 is incorporated and further, O'Neill discloses:

- wherein said first upgrade agent program is transferred from said second memory and stored in said first memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 223).

**Per claim 7:**

The rejection of claim 6 is incorporated and further, O'Neill discloses:

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- wherein said downloaded software upgrade file and said first upgrade agent program are transferred from said second memory to said first memory by an interprocessor communication unit (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 223).

**Per claim 8:**

The rejection of claim 7 is incorporated and further, O'Neill discloses:

- wherein said first CPU executes said first upgrade agent program after said downloaded software upgrade file is transferred into said first memory from said second memory (paragraph [0037] "software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device").

**Per claim 9:**

The rejection of claim 2 is incorporated and further, O'Neill discloses:

- wherein said second CPU is capable of executing a second upgrade agent program that replaces second existing code associated with a second existing software file in said second memory with second replacement code from said



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downloaded software upgrade file (paragraph [0037] "software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device").

**Per claim 10:**

The rejection of claim 9 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is stored in said second memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." Also See Fig. 2, element 221 and related discussion).

**Per claim 11:**

The rejection of claim 10 is incorporated and further, O'Neill discloses:

- wherein said second upgrade agent program is transferred from said first memory and stored in said second memory (paragraph [0032] "download agent...download...software from distribution... upload agent... uploads software... in the wireless communication device...in the non-volatile memory...software update..." ).

**Per claim 12:**

The rejection of claim 11 is incorporated and further, O'Neill discloses:

- wherein said second CPU executes said second upgrade agent program after said second upgrade agent program is transferred into said second memory from said first memory (paragraph [0037] "software updates may be downloaded and easily executed using one or more update, download, and upload agents of the primary update environment in conjunction with one or more software applications, components, and/or firmware resident in memory of the wireless communication device").

**Claims 13-24** are the method claim corresponding to apparatus claims 1-12 respectively, and rejected under the same rational set forth in connection with the rejection of claims 1-12 respectively, as noted above.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Satish S. Rampuria** whose telephone number is **(571) 272-3732**. The examiner can normally be reached on **8:30 am to 5:00 pm** Monday to Friday except every other Friday and federal holidays. Any inquiry of a general nature or relating to the status of this application should be directed to the **TC 2100 Group receptionist: 571-272-2100**.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wei Y. Zhen** can be reached on **(571) 272-3708**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 2191

*Mary Stetman*  
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*4.12-2007*